

REMARKS/ARGUMENTS

In the FINAL Office action dated October 11, 2007, the Examiner rejected claims 1-3 and 6, as being anticipated under 35 U.S. C. § 102(b) by U.S. Patent No. 6,625,937 B1 to Parker *et al.* Claims 4 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over '937 in view of U.S. Patent No. 4,341,052 to Douglass, Jr. Thus, the Examiner merely repeated the previous rejections, however, the Examiner withdrew the meritless objections to Applicant's language and punctuation of the first Office action.

The Examiner cited 37 C.F.R. § 1.3 regarding the manner in which applicants and attorneys conduct business with the U.S. Patent and Trademark Office. The Examiner also commented on the duty of the U.S. Patent and Trademark Office to serve the public. These are correct citations, and the Examiner should consider that 37 C.F.R. § 1.3 is a two-way street, and that the public interest is little served when an examiner in the U.S. Patent and Trademark Office presents an office action which is not supported by either 35 U.S.C., 37 C.F.R., or the MPEP. It appeared to the undersigned that the previous Office action did not serve the public interest, and that the Examiner was overstepping the Examiner's authority under the statutes and regulations, thus, the Examiner was not conducting the business of the U.S. Patent and Trademark Office with respect to Applicant with decorum and courtesy.

In the Specification, no changes

In the Claims, claims 1, 4, 5 and 6 are amended; claim 2 is cancelled; new claim 7 is presented. The requisite fee for an independent claim in excess of three accompanies this RCE.

The Invention

The invention is for a mixed-use building structure, and more specifically to such structure which includes, immediately and independently, over a selected lower floor, such as, but not necessarily, a ground-level floor, an overhead sub-story, *i.e.*, a story of less-than full height, that accommodates a utilities-conduit bypass for the immediate lower floor. This bypass provides the internal volume wherein the lower floor can be defined by a full, unoccluded plate-height, which, in turn, allows for the lower-level occupancy early in the process of building construction. Plate-height in this space, *i.e.*, that vertical dimension in the space which extends from floor plane to ceiling plane, also referred to as a continuum, is unoccluded in the sense that no utilities-conduit structures, such as water pipes, gas lines, electrical conduits, etc., ever extend directly into the space, or through the ceiling plane, in the context of providing utility services to building floors which are above that lower-level story. It should be understood that the structure of the invention includes (1) full-height stories and (2) less-than-full-height sub stories; all vertically stacked above one another. The sub-story provides an independent utilities containment space, eliminating the need for such utilities to occupy space in the full-height spaces.

The Applied Art

U. S. Patent No. 6,625,937 B1 to Parker *et al.* describes a building technique for fabricating modular units for incorporation into a building, which may consist of one or more units, and which may be single or multi-story.

U. S. Patent No. 4,341,052 to Douglass, Jr. describes a technique of constructing a residential building wherein a utility core is centrally located within a living unit, on the same

floor as the living unit, and wherein utility cores are vertically stacked above one another in the building.

The Claims

There are a number of words used in Applicant's claims which have been ignored by the Examiner in applying prior art references in this Application. For instance, the Examiner seems to have ignored the limitation of "vertically spaced stories." The structure of Applicant's invention has a relationship to a pair of stories, which are normal height stories, or floors, between which a space exists. In this context, it is important to note that the space between the stories is not in any way a portion of either one of these stories. The Examiner has also ignored the limitations of (a) an "independent" utilities containment space, which is (b) intermediate lower and higher stories. Further, the Examiner has ignored the concept of a "lined" (against liquid drainage) containment space.

Amended claim 1 clarifies that the utilities sub-story lies wholly above the lower story and wholly below the higher story and is constructed and arranged to contain utilities-conduit structure for servicing the higher story without impeding the lower story. Further, claim 1 requires that:

...[the] utilities-conduit structure relevant to the supply of utilities services *upwardly from said containment space toward said higher story*, with related utilities services supply to said utilities-conduit structure extending thereto in a manner *avoiding any presence within the mentioned internal volume of said lower story.*
emphasis added

As described in '937, col. 1, lines 48-61, utilities extend into upper and lower stories. Each

module includes utilities, col. 7, lines 18-40, thus, utilities extend into what would be upper and lower stories of the completed structure, again, not meeting the requirements of claim 1, which does not have utilities extending therein from the sub-story space.

‘937 does not teach nor suggest spaced stories. The stories illustrated and discussed in ‘937 all vertically abut one another. This is clearly presented in ‘937. ‘937 therefore neither illustrates nor describes, and certainly does not suggest, any internal building-frame space which is independent of story-containing space. In other words, all space within the ‘937 structure is space which resides within the volume of a full-height story, or floor. Nothing is independent of story-volume space. Given the teaching of ‘937, and the plain language of the claims, it is apparent that ‘937 is not an adequate 35 U.S. C. § 102(b) reference. Claim 1 is allowable over the reference.

Claim 3 is allowable with its allowable parent claim.

Claim 4 includes the limitations of claim 1, and additionally requires that “...supply-input portions...are external to the building structure...in a manner avoiding any presence within the internal volume of said lower story.” The Examiner states that such structure is not shown in ‘937, which is correct, but that Douglass, Jr., ‘052 shows such structure, citing ‘052 element 30 as a containment space, and elements 160, 162, 170, and 140 as supply-input portions. Initially, the containment space is *above* the lower story: ‘052 element 30 is identified a ‘master bathroom.” A utility core 10 is located between (or intermediate) the master bathroom 30 and a guest bathroom 32, all of which are on the same level. Col. 4, lines 5-14. The so-called supply-input portions 160 (a hole), 162 (another hole), col. 5, lines 52-57, 170 (a drain pipe), col.

5, lines 57-62, and 140 (sewer stub-up) col. 5, lines 20-24, all occupy space in the structure on the same level with the occupied volume of the first story. Thus, the applied portions of '937 and '052, taken alone or in combination, do not teach or suggest the limitations of claim 4, which clearly require "...interconnection between said utilities-conduit structure and such internal supplies in a manner avoiding any presence within the internal volume of said lower story." Claim 4 is allowable over the applied 35 U.S.C. § 103(a) art.

Claim 5 is allowable over the applied art. The Examiner states that steel is water impervious. This is a partially correct statement. The Examiner's statement is true iff the steel comprising the floor is (1) a single sheet without any opening(s) therein, or (2) plural sheets of steel which are welded together to form a water-tight layer. As there are utilities extending through the floors, both to the upper and lower stories thereof, of both '937 and '052, there must be openings in the metal. There is no teaching nor suggestion that floor components 61 are welded. Finally, there is no teaching nor suggestion in either reference of the provision of a water-impervious lining.

Claim 6 is allowable over the applied 35 U.S. C. § 102(e) art, in that the utilities as shown in '937 occupy a portion of the internal volume of the lower story. See Figs 1 and 2, which contain bathrooms and kitchens, and which do not teach nor suggest bringing utilities into the structure to avoid a presence within the structure when same comprises a lower story.

New claim 7 includes the limitations of allowable claims 1 and 5, and is allowable for the reasons set forth in connection therewith.

Again, it is clear that none of the art cited and applied by the Examiner comprises a

legitimate 35 U.S. C. § 102 reference, in that, as is well known to anybody working in the patent arts, an application of 35 U.S. C. § 102 in a claim rejection effectively requires that an Examiner point with specificity to *A SINGLE* reference which directly shows *ALL* claim limitations.

Dramatically, the Examiner is unable to do this in any way with the '937 reference, which reference has none of the claimed limitations -- NOT ONE. The Examiner is invited to explain how the application of such a faulty reference in any way promotes the public interest.

In light of the foregoing amendment and remarks, the Examiner is respectfully requested to reconsider the rejections and objections state in the Office action, and pass the application to allowance. If the Examiner has any questions regarding the amendment or remarks, the Examiner is invited to contact the undersigned.

Request for Extension of time in Which to Respond

Applicants hereby request an extension of time under 37 C.F.R. § 1.136(a). A PTOForm 2038 Credit Card authorization in the amount of \$570.00 is enclosed to pay the requisite RCE fee, the extension fee and the fee for a fourth independent claim. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any over-payment to Account No. 22-0258.

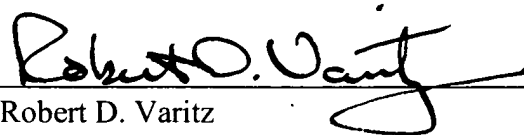
Customer Number

56703

Respectfully Submitted,

ROBERT D. VARITZ, P.C.

Registration No: 31436
Telephone: 503-720-1983
Facsimile: 503-233-7730


Robert D. Varitz
4915 S.E. 33d Place
Portland, Oregon 97202